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No. 909.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

WALTER E. MEYER, INTERVENER, *Petitioner,*

v.

BERRYMAN HENWOOD, as Trustee of St. Louis Southwestern Railway Company Lines, *et al.*, *Respondents.*

MEMORANDUM ON BEHALF OF ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, DEBTOR, IN OPPOSITION TO PETITION FOR REHEARING.

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May 28, 1947.

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MEMORANDUM ON BEHALF OF ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, DEBTOR, IN OPPOSITION TO PETITION FOR REHEARING.

Statement.

Petitions for certiorari in the St. Louis Southwestern Railway Company reorganization proceeding were filed by Southern Pacific Company (No. 879), by Walter E. Meyer (No. 909), and by this Respondent (No. 936). All three petitions sought review of the decision of the Circuit Court of Appeals for the Eighth Circuit on the ground, in essence, that the Plan of Reorganization had become unfair in the light of "changed conditions." In addition, the Petitioner in this case (No. 909), Walter E. Meyer, raised certain other issues, his main contention apparently being that the Circuit Court of Appeals erred in holding that there was substantial evidence to sustain the Commission's finding,

affirmed by the District Court, that the Debtor's earning power has not been impaired by breaches of fiduciary and other obligations by Southern Pacific Company which, Petitioner claimed, required the "subordination" of the claim of that Company.

All three petitions were denied on March 10, 1947. Thereafter, by successive orders, the time of the Petitioner in this case, No. 909, to file a petition for rehearing was extended to May 23, 1947. On the last-mentioned date this time was further extended to May 28, 1947.

This Respondent has not been served with, or seen, the proposed petition for rehearing. It has, however, read in the Clerk's office Petitioner's last application, dated May 21, 1947, for a further extension of time to file the same, in which application Petitioner asserts that "important developments" since the filing of his petition for certiorari require reconsideration of the denial thereof by the Court.

Incomplete and possibly misleading statements in Petitioner's said application dated May 21, 1947, concerning the "important developments," which Petitioner indicates he intends to assert as reasons for granting a rehearing, impel this Respondent to invoke the rarely sought privilege of reply,—such reply, however, to be devoted to matters occurring subsequent to the filing of the petitions for certiorari.

The admittedly "important developments" since the filing of the petitions for certiorari (*which, however, in no sense require a reconsideration of the denial of certiorari*) are as follows:

On April 10, 1947, the Circuit Court of Appeals, having been notified by this Court that the several petitions for writs of certiorari, including No. 909, had been denied, sent

its mandates to the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri, affirming, with a minor exception, the order of the District Court approving the Plan.

On April 30, 1947, this Respondent (herein usually called the Debtor) and its Trustee filed a Joint Petition in the District Court alleging, in effect, that, as a result of the Debtor's large accumulation of cash and increased earnings and certain compromise and adjustment agreements entered into with some of its creditors, it is now able to pay or satisfy all its matured indebtedness and to meet its debts as they mature; that, accordingly, it is no longer in need of reorganization and desires that the reorganization proceedings be dismissed; that upon dismissal of the proceedings it will pay in full all obligations now in default, or will otherwise provide therefor in a manner consented to by the holders thereof, pursuant to a Dismissal Program annexed to said Joint Petition; and that the Debtor has sufficient liquid resources to carry out the Dismissal Program and, in addition, to meet all necessary requirements for working capital and the efficient operation and maintenance of its properties. Among other advantages accruing to the Debtor from the carrying out of the Dismissal Program (copy of which is annexed hereto as Appendix A) will be the renewal and extension of indebtedness aggregating $21,482,250 principal amount on a serial maturity basis, at reduced interest rates of 2½% and 3% instead of the present rate of 5%, under an arrangement calling for aggregate principal payments of $1,000,000 a year.

Pursuant to order of the District Court on April 30, 1947, said Joint Petition was set down for hearing on May 19, 1947, and notice thereof was given to the Interstate Commerce Commission and to all parties in interest, in-

cluding Walter E. Meyer, and published in various newspapers in New York, St. Louis, and Dallas. Said order provided that any answers or affidavits in opposition to the Joint Petition be filed not later than five days prior to the hearing date.

Thereafter the Petitioner Meyer made a motion, returnable May 16, 1947, to postpone said hearing until this Court should act upon his proposed petition for rehearing of the denial of his petition for certiorari. That motion, after argument, was denied by the District Court on May 16, 1947.

On May 19 and May 20, 1947, a hearing was held on the Joint Petition to dismiss the reorganization proceedings. Neither at nor prior to the hearing was any answer or affidavit filed in opposition to the Joint Petition. At the hearing the Petitioner Meyer filed a "Memorandum" in opposition to the Joint Petition, in which he said that the proper procedure was to remand the proceedings to the Commission so that Petitioner might ask "that the Commission reconsider its refusal to subordinate the claim of Southern Pacific Company" *(an issue which has already been ruled adversely to Mr. Meyer by the Commission and both courts below).*

At the conclusion of the hearing, on May 20, 1947, and with the vigorous approval of every party appearing at the hearing except Mr. Meyer, the District Court entered an order, a copy of which is annexed hereto as Appendix B,—

> (1) finding, among other things,
>
> (a) that the Debtor has sufficient liquid assets to enable it to make all the payments contemplated by the Dismissal Program and, in addition, to meet all requirements for working capital and the efficient maintenance and operation of its properties;

(b) that the Debtor is no longer in need of reorganization and that, upon the carrying out of the Dismissal Program, it will be able to meet its debts as they mature; and

(c) that, upon approval by the Interstate Commerce Commission of the extension, renewal, issue, pledge and repledge by the Debtor of the securities necessary to carry out the said Program, the reorganization proceedings should be dismissed;

(2) directing the Debtor to file an application with the Commission under Section 20a of the Interstate Commerce Act for approval of the extension, renewal, issue, pledge and repledge by the Debtor of the securities necessary to carry out the said Program; and

(3) retaining jurisdiction to enter appropriate orders directing the parties to consummate the Dismissal Program and to dismiss the proceedings.

On May 26, 1947, pursuant to said order of May 20, 1947, the Debtor filed with the Commission its application under Section 20a of the Interstate Commerce Act as above mentioned.

The Effect of Carrying Out the Dismissal Program.

The Plan of Reorganization certified by the Commission and approved by both courts below completely wipes out both the preferred and common stockholders of the Debtor and eliminates a substantial portion of the junior debt. The Dismissal Program, when consummated, will result in the restoration of a solvent debtor to its stockholders, with no obligations in default. Such a disposition

of the proceedings must necessarily be more satisfactory to all stockholders than *any possible plan of reorganization.*

The Dismissal Program calls for the payment in cash of indebtedness, principal and interest, amounting to $18,331,525 as of July 1, 1947. It was made possible by the Debtor's accumulation of cash and the voluntary agreements of the holders of the Debtor's 5% Secured Notes, aggregating $22,382,250 in principal amount, to renew and extend said notes in an aggregate principal amount of $21,482,250 on a sharply reduced interest basis.

The effect of carrying out the Dismissal Program will be to reduce the Debtor's funded indebtedness from $66,939,145 to $55,802,250 and to reduce its annual fixed charges from $3,133,144 to $2,050,529.

Since the effect of carrying out the Program will be to reduce the Debtor's annual fixed charges by over $1,000,000 a year, each day's unnecessary delay in carrying out the Program will cost the Debtor and its securityholders approximately $3,000. Moreover, the secured noteholders have the right to cancel their compromise and adjustment agreements upon 30 days' notice, so that any undue delay in carrying out the Program may result in its complete nullification, to the great injury of all creditors and stockholders. It was because of such considerations, and a justifiable uncertainty as to whether the Petitioner would fully and accurately set forth the "important developments" since the filing of the petitions for certiorari, that this Respondent, at the risk of unduly dignifying the petition for rehearing, has undertaken to reply thereto.

Argument.

The matters occurring since the petitions for certiorari were filed, as above set forth, do not in any way require, or even suggest, reconsideration of the petition for certiorari in No. 909. On the contrary, they demonstrate that, for all practical purposes, the principal issues raised by all the petitions have become moot.

The Issue as to the Fairness of the Plan.

In his petition for certiorari, Mr. Meyer contended, as did the Debtor (No. 936) and Southern Pacific (No. 879), that the Plan had become unfair because of "changed conditions". Whether or not that is the case is no longer important or relevant, since the District Court has found that the Debtor can now pay or otherwise provide for all its matured indebtedness, can now meet its debts as they mature and, hence, is no longer in need of reorganization; and has ordered that, when the Commission has approved the extension, renewal, issue, pledge and repledge of the securities necessary to carry out said Program, the reorganization proceedings should be dismissed.

Patently, it would be a wholly meaningless act for this Court to grant certiorari for the purpose of determining whether or not the Plan has become unfair in the light of the "changed conditions", because even if it so found, contrary to both courts below, the decision would not have any practical effect upon the rights of any party, including Petitioner. In other words, since the District Court has found (upon the basis of considerations having nothing to do with the fairness or unfairness of the Plan) that the

proceedings should be dismissed and has taken formal action looking to such dismissal, thus eliminating the necessity for *any plan,* the question whether the approved Plan is fair has, for all practical purposes, become moot.

Petitioner asserts in his said application for an extension, dated May 21, 1947, that whether the Debtor is in need of reorganization is a question for the Commission and not for the District Court, citing *Ecker* v. *Western Pacific Corp.,* 318 U. S. 448 (1943); *Group of Investors* v. *Milwaukee R. Co.,* 318 U. S. 523 (1943). What bearing this assertion has on the proposed petition for rehearing is not discernible. If Petitioner desires to raise the question whether a District Court has jurisdiction to dismiss proceedings under Section 77 of the Bankruptcy Act on the ground that a reorganization is no longer necessary, he should directly challenge the District Court's order of May 20, 1947. Surely, that issue is not before this Court upon the petition for certiorari.

As a matter of fact, however, the jurisdiction of a District Court to dismiss a Section 77 proceeding when the basic purpose thereof has been achieved, or when the proceeding is no longer necessary (as a result of the debtor's having become able to meet its debts as they mature), is clearly demonstrated by numerous decisions dealing with the dismissal of (a) ordinary bankruptcy proceedings[1], (b) equity receivership proceedings[2], (c) proceedings

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[1] See, *In re Public Industrials Corporation,* 53 F. Supp. 960, 961 (D. Del., 1944); *In re Vidor,* 46 F. Supp. 468 (S. D. N. Y., 1941).

[2] See, *Railroad Co.* v. *Soutter,* 2 Wallace 510, 521-522 (1864).

under Section 77B, or Chapter X, of the Bankruptcy Act[3], and (d) proceedings under Section 77 itself.[4]

The Issues Involved in Petitioner's Charges against Southern Pacific Company.

In his petition for certiorari Mr. Meyer also contended—

(1) that the Circuit Court of Appeals did not make an independent review to determine whether there was legal objection to the record upon which the Commission had estimated the Debtor's prospective earnings and to determine whether the claim of Southern Pacific Company should be expunged or subordinated;

(2) that both the Commission and the District Court failed to make an investigation alleged to be necessary to insure the control of the Debtor in the interests of its securityholders upon emergence from reorganization;

(3) that Petitioner's motion in the Circuit Court of Appeals to remand the proceedings should be granted, and

(4) that the Circuit Court of Appeals erred in holding that it was in the discretion of the District Court to deny the Petitioner's motion for a new hearing.

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[3] See, *Sword S. S. Line* v. *Vendramis*, 116 F. (2d) 665, 668, (C. C. A. 2d, 1940); *In re William Jameson & Co., Inc.*, 47 F. Supp. 450 (S. D. N. Y., 1942); Gerdes, Corporate Reorganizations, §1153, page 1838.

[4] In two unreported cases under Section 77, the proceedings have been dismissed when it developed during the course of the proceedings that the debtors had become able to meet their debts as they matured. See, *In the Matter of Hoboken Manufacturers Railroad Co.*, No. 4873a, in the District Court of New Jersey, decided January 27, 1947; *In the Matter of Missouri Pacific Railroad Co.*, No. 6935, in the Eastern Judicial District of Missouri, dismissing from bankruptcy Missouri-Illinois Railroad Company, decided June 1, 1944.

Plainly, the matters occurring subsequent to the filing of the petitions for certiorari, as above set forth, have no bearing whatever on the foregoing issues. As a matter of fact, Petitioner's basic contention, that the claim of Southern Pacific Company should be "subordinated" because of alleged breaches of fiduciary and other obligations, was made in connection with a proposed plan of reorganization in a proceeding under Section 77. If such proceeding is now to be dismissed because no plan of reorganization is necessary, the issues as to the subordination of the Southern Pacific claim have, for all practical purposes, become moot. See, *Sword S. S. Line* v. *Vendramis,* 116 F. (2d) 665, 668 (C. C. A. 2d, 1940), *supra.*

Petitioner asserts in his application for extension of time, dated May 21, 1947, that this Respondent and Southern Pacific Company, while contending in their petitions for certiorari (Nos. 879 and 936) that changed conditions required a new plan, "failed to reveal" that the amount of funds on hand and the prospect of future earnings would make it practicable to pay out on July 1, 1947, the sum of $18,331,525. It is a sufficient reply to refer the Court to the petitions in Nos. 879 and 936, in which the greatly improved financial condition of the Debtor is urged at length and in detail. There was, of course, no occasion in said petitions to discuss the Debtor's ability to pay out the sum of $18,331,525, or any other sum, on July 1, 1947, since the Dismissal Program was not formulated until many months later. Both petitions, however, had annexed as exhibits the Debtor's balance sheet as of October 31, 1946, which showed net current assets of $22,090,504, and total cash and temporary cash investments aggregating $23,000,000.

Petitioner also asserts in his application dated May 21, 1947, that The Chase National Bank and The Mississippi Valley Trust Company in their brief in opposition did not disclose that they were willing to consent to extend their notes and reduce the interest rate thereon. As to this assertion, it may be pointed out that the Banks' brief in opposition was filed on February 22, 1947, and that their agreements to extend their notes at a reduced interest rate were not entered into until late in April, 1947.

Conclusion.

The matters occurring subsequent to the filing of the petitions for certiorari have no relevancy whatever to any issue presented by the petition, especially since, as a practical matter, the findings made by the District Court in its order of May 20, 1947 (that the Debtor can now meet its debts as they mature and is no longer in need of reorganization) preclude the possibility of ever consummating the approved Plan, whether fair or unfair.

The petition for rehearing should be denied.

Dated, May 28, 1947.

Respectfully submitted,

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Appendix A.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

Program for Dismissal of Bankruptcy Reorganization Proceedings

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I.

Introductory

On December 12, 1935, the St. Louis Southwestern Railway Company filed a petition in the United States District Court for the Eastern District of Missouri, alleging that it was unable to meet it debts as they matured and that it desired to effect a Plan of Reorganization pursuant to Section 77 of the Bankruptcy Act, as amended. On the same date or shortly thereafter similar petitions were filed by three of the Company's subsidiaries. For a period of over 11 years the properties of the Railway Company and its said subsidiaries have been operated under direction of the Court. No Plan of Reorganization has yet been consummated. Although a Plan has been certified by the Interstate Commerce Commission and approved by the Court, it has not yet been submitted to the security holders for vote thereon and it is improbable that the pending Plan of Reorganization can be consummated within the next two or three years.[1] As the result of large interest payments made pursuant to order of the District Court since January 1, 1942, the effective date of the Plan, the carrying out of the Plan would give rise to difficult problems of adjustment and interpretation which might result in pro-

[1] In March, 1942, the Commission certified the Plan to the District Court, which Plan was approved by the District Court in February, 1944. In August, 1946, the Circuit Court of Appeals for the Eighth Circuit affirmed the order of the District Court approving the Plan, except in a relatively minor respect. On March 10, 1947, the Supreme Court denied petitions for certiorari to review the decision of the Circuit Court of Appeals.

tracted litigation. Moreover, if certain proposed legislation were enacted, the Plan might have to be entirely abandoned and a new start made on reorganization if the properties were to remain in the jurisdiction of the Court.

During the 11-year period that the railroad has been operated under jurisdiction of the Court, World War II was begun and has ended, and the financial and physical condition of the Railway Company has so changed that it no longer is in need of reorganization and desires the dismissal of the bankruptcy reorganization proceedings. Its earnings in recent years and its prospective earnings are such that, upon the carrying out of the Program outlined below, it will have discharged all obligations which will be then due and payable, will be in a position to meet all its obligations as they mature, and will have adequate working capital for the efficient maintenance and operation of its railway properties.

II.

Petition for Dismissal of Bankruptcy Reorganization Proceedings

It is contemplated that the Railway Company and/or the Bankruptcy Trustee, and possibly its said subsidiaries, will file a petition with the District Court for a dismissal of the Bankruptcy reorganization proceedings on the ground that the Railway Company and its subsidiary debtors are no longer in need of reorganization and will be able to meet their obligations as they mature after the dismissal of such proceedings and after making the adjustments provided for in this Program. It is also contemplated that, with the approval of the Court, application will be made to the Interstate Commerce Commission for approval of the renewal and extension of certain outstanding notes of the Railway Company, the issuance of certain non-interest-bearing Serial Notes, the repledge of bonds as collateral therefor, and any other steps in connection therewith if such approval is required.

III.

Program of Railway Company in connection with Termination of Bankruptcy Reorganization Proceedings

Upon the dismissal of the bankruptcy proceedings, and subject to the order of the Court, the Railway Company will either pay in full all obligations of principal and interest now in default or will otherwise provide for all of such obligations in a manner consented to by all the holders thereof. Securities in default which are not paid or otherwise provided for will be continued on a current interest basis. The following action will be taken in respect to the various securities and obligations in default:[2]

1. *$10,000,000 Second Mortgage Income Certificates.* All unpaid interest coupons, maturing prior to the closing date, on these Certificates will be paid, and future accruing interest will be paid when and as the same becomes payable pursuant to the provisions of the Second Mortgage.

2. *$21,596,000 First Terminal and Unifying Bonds —Payments and Cancellation.* All the First Terminal and Unifying Bonds (herein referred to as Terminal Bonds) are to be cancelled, the Terminal Mortgage is to be satisfied, and the collateral held by the Terminal Mortgage Trustee turned over to the Chemical Bank & Trust Company, as Trustee for the General and Refunding Bonds (herein referred to as Refunding Bonds), thus stepping up the position of the lien for the Refunding Bonds to the place now held by the Terminal Mortgage. This collapsing of the Terminal Mortgage will be effectuated as follows:

(a) $8,063,000 Terminal Bonds held by the public (the principal being now due and payable by declara-

[2] The closing date has been assumed to be July 1, 1947, for the purpose of the computations herein. Actually such closing date may be later, and in that event adjustments will have to be made. All amounts and computations herein are subject to verification and correction.

tion) will be paid, with accrued interest to the date of payment, the funds therefor to be deposited by the Railway Company in trust with the Guaranty Trust Company of New York, the Terminal Mortgage Trustee.

(b) $13,533,000 pledged Terminal Bonds will be cancelled and surrendered by the Chemical Bank & Trust Company, as Refunding Mortgage Trustee, to the Terminal Mortgage Trustee.

(c) The Terminal Mortgage Trustee will cancel the Terminal Mortgage and deliver all collateral held by it to the Chemical Bank & Trust Company, as Refunding Mortgage Trustee.

3. *$39,557,500 General and Refunding Bonds.* All unpaid interest coupons, maturing prior to the closing date, on the $9,327,500 principal amount of these Bonds held by the public will be paid, and all subsequently accruing interest will be paid when and as the same becomes due. The $13,533,000 Terminal Bonds pledged under the Refunding Mortgage will be surrendered to the Terminal Mortgage Trustee for cancellation, the Terminal Mortgage will be cancelled and all collateral held under that Mortgage delivered to the Chemical Bank & Trust Company, as Trustee under the Refunding Mortgage, as provided in paragraph 2 above. $30,230,000 principal amount of the Refunding Bonds are pledged to secure the 5% Secured Notes held by Southern Pacific Company, The Chase National Bank of the City of New York, and The Mississippi Valley Trust Company, mentioned below. These pledgees will waive the payment of the unpaid interest on the pledged Refunding Bonds accrued to the date of closing and the pledged Bonds will be appropriately stamped to evidence such waiver. They will also waive the payment of all unpaid accrued interest on the pledged Southern Illinois and Missouri Bridge Company Bonds.

4. *$2,241,663 Stephenville North & South Texas Railway Company First Mortgage Bonds.* These Bonds will be paid at the reduced principal amount thereof, with interest to the date of payment, under arrangements similar to those provided for the payment of the publicly-held Terminal Bonds as set forth in paragraph 2(a) above, except to the extent that certain holders thereof may have agreed to accept less than such payment of principal and interest in full.

5. *$932,232 Central Arkansas & Eastern Railroad Company First Mortgage Bonds.* These Bonds will be paid at the reduced principal amount thereof, with interest to the date of payment, under arrangements similar to those provided for the payment of the publicly-held Terminal Bonds as set forth in paragraph 2(a) above, except to the extent that certain holders thereof may have agreed to accept less than such payment of principal and interest in full.

6. *$3,500,000 Chase National Bank 5% Secured Note.* $259,758 on account of interest accrued to July 1, 1947, and $700,000 on account of the principal of this Note will be paid. The Note will be renewed and extended in the reduced principal amount of $2,800,000 and will continue to be secured by the Refunding Bonds and the Southern Illinois and Missouri Bridge Company Bonds now pledged with the noteholder. A Renewal and Extension Agreement will be entered into with The Chase National Bank of the City of New York, setting forth the terms and conditions of the renewal and extension of the Note. Such Agreement will provide that the Note until due will bear interest at the rate of 2½% per annum, payable semi-annually, and that the reduced principal amount will be paid in full by semi-annual payments thereon in equal amounts over a five-year period. This Note, as renewed and extended, will be redeemable without the payment of any premium, as a whole at any time, or in part from

time to time in an amount equal to any one or more of the principal instalments of such Note. No dividends will be payable on the preferred and common stocks of the Railway Company until 50% of the reduced principal amount of the Note has been paid. At the option of the said Bank the Railway Company will, in lieu of entering into a Renewal and Extension Agreement as aforesaid, issue one or more renewal notes to the Bank on the foregoing terms.

7. *$1,000,000 Mississippi Valley Trust Company 5% Secured Note.* $74,442 on account of interest accrued to July 1, 1947, and $200,000 on account of the principal of this Note will be paid. The Note will be renewed and extended in the reduced principal amount of $800,000 and will continue to be secured by the Refunding Bonds and Southern Illinois and Missouri Bridge Company Bonds now pledged with the noteholder. A Renewal and Extension Agreement will be entered into with The Mississippi Valley Trust Company, setting forth the terms and conditions of the renewal and extension of the Note. Such Agreement will provide that the Note until due will bear interest at the rate of 2½% per annum, payable semi-annually, and that the reduced principal amount will be paid in full by semi-annual payments thereon in equal amounts over a five-year period. This Note, as renewed and extended, will be redeemable without the payment of any premium, as a whole at any time, or in part from time to time in an amount equal to any one or more of the principal instalments of such Note. No dividends will be payable on the preferred and common stocks of the Railway Company until 50% of the reduced principal amount of the Note has been paid. At the option of the said Bank the Railway Company will, in lieu of entering into a Renewal and Extension Agreement as aforesaid, issue one or more renewal notes to the Bank on the foregoing terms.

8. *$17,882,250 Southern Pacific Company 5% Secured Note.* $1,017,390 on account of accrued interest will be paid in cash. The balance of accrued interest to July 1, 1947, $1,000,000, will be paid by the issuance by the Railway Company of non-interest-bearing Serial Notes for $1,000,000. The Note in the amount of $17,882,250 presently held by Southern Pacific Company will be renewed and extended in the same principal amount. This Note and the non-interest-bearing Serial Notes will be secured by the Refunding Bonds and Southern Illinois & Missouri Bridge Company Bonds now pledged with Southern Pacific Company. A Renewal and Extension Agreement will be entered into with Southern Pacific Company, setting forth the terms and conditions of the renewal and extension of the $17,882,250 Note. Such Agreement will provide that the Note until due will bear interest at the rate of 3% per annum, payable semi-annually, and that the principal amount will be paid in full by semi-annual payments thereon as hereinafter indicated. This Note, as renewed and extended, will be redeemable without the payment of any premium, as a whole at any time, or in part from time to time in an amount equal to any one or more of the principal instalments of such Note.

During the first five years after the closing, $720,000 a year will be required to make the payments of principal on the renewed and extended Notes to be held by the two above-mentioned banks. The difference between said sum and $1,000,000, or $280,000, will be payable in equal semi-annual instalments to Southern Pacific Company, first on account of the principal of the aforesaid non-interest-bearing Serial Notes and then on account of the principal on the renewed and extended Note for $17,882,250 to be held by that Company. The principal amount of the renewed and extended Note for $17,882,250 will be payable to the

extent of $120,000 on July 1, 1951, then in equal semi-annual instalments of $140,000 during the year ending July 1, 1952, and thereafter in semi-annual instalments of $500,000 each.

$500,000 Gray's Point Terminal Railway Company First Mortgage Bonds. The principal amount and accrued interest of these bonds, which are not in default, will be paid by St. Louis Southwestern Railway Company at their maturity on December 1, 1947.

IV.

Undertakings of Railway Company

The Railway Company, in connection with the dismissal proceedings, will undertake, subject to requisite approval of the District Court and the Interstate Commerce Commission, (a) to make all payments, enter into all undertakings, and take all other steps set forth in the Program, (b) to pay all proper costs and expenses incurred by officers of the Court in the reorganization proceedings and all administrative claims or expenses approved by the Court, (c) to pay all allowances and expenses (including reasonable attorneys' fees) of all committees or other representatives of creditors and stockholders, trustees under indentures, depositaries and other persons, incurred in connection with the proceedings and the Plan of Reorganization as may be approved by the Court within such maximum limitations as may be fixed by the Interstate Commerce Commission, (d) to pay all legal fees and expenses in connection with the dismissal of the bankruptcy reorganization proceedings to the extent required by indentures or other contracts or as may be approved by the Railway Company, and (e) to assume all contracts, commitments and obligations entered into or incurred by the Trustee in the operation of the properties of the Railway Company and all prior contracts, commitments, and obligations of the Railway Company which have not been disaffirmed by the Trustee.

Dated April 7, 1947.

Appendix B.

IN THE

DISTRICT COURT OF THE UNITED STATES,

EASTERN DIVISION, EASTERN JUDICIAL DISTRICT OF MISSOURI.

IN THE MATTER *of* ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Debtor.	In Proceedings for the Reorganization of a Railroad. No. 8497

ORDER

LOOKING TO FINAL DISMISSAL OF THESE PROCEEDINGS, AUTHORIZING DEBTOR TO FILE APPLICATION WITH INTERSTATE COMMERCE COMMISSION, AND GRANTING OTHER RELIEF

Upon due consideration of the joint petition of Berryman Henwood, Trustee of the property of St. Louis Southwestern Railway Company, Debtor, and of St. Louis Southwestern Railway Company of Texas, subsidiary debtor, and St. Louis Southwestern Railway Company, Debtor, verified and filed herein on the 30th day of April 1947, for an order dismissing these proceedings and for other relief, and the joint petition having been set down for hearing on the 19th day of May 1947, and having come on to be heard on said date;

And it appearing to the Court that the Trustee, pursuant to order of this Court, dated April 30, 1947, gave reason-

able notice of the time and place of said hearing by mailing a copy of such order by registered mail to the Interstate Commerce Commission, to each subsidiary debtor, to each of the mortgage trustees of the several debtors or their attorneys, to all intervenors herein or their attorneys, and to all other parties to whom the said Trustee customarily sends printed copies of orders entered in these proceedings, all as provided in such order;

And it further appearing to the Court that the Trustee, pursuant to said order of the Court, dated April 30, 1947, duly caused to be published the notice of the time and place of said hearing for three days, each of which was at least ten days prior to the date of said hearing, in the "St. Louis Post-Dispatch", "Dallas News", and "New York Times";

And the Trustee, the Debtor and other parties having appeared by their respective counsel at said hearing on said joint petition and the Court having heard such counsel and the testimony of witnesses thereat and having considered the "Program for Dismissal of Bankruptcy Reorganization Proceedings", dated April 7, 1947 (herein referred to as the Program), annexed to the joint petition and having considered the evidence presented at said hearing and having considered all objections to said joint petition filed herein or made at said hearing;

The Court makes the following

FINDINGS:

1. That the Debtor has, in the possession of the Trustee, sufficient cash, or assets which are the equivalent of cash, to enable it to carry out the Program and, in addition, to meet all proper requirements for working capital and the efficient maintenance and operation of its properties;

2. That the Debtor and its subsidiary debtors are no longer in need of reorganization and that, upon the carry-

ing out of the Program, the Debtor will be able to meet its debts and the debts of its subsidiary debtors as they mature;

3. That, upon the carrying out of the Program, all defaults in the payment of principal and interest on any obligations of the Debtor and its subsidiary debtors and all other defaults or events of default under any of the mortgages, indentures, or securities issued by the Debtor and its subsidiary debtors have been, or will have been, cured or remedied;

4. That, upon the Commission's approval of the extension, renewal, issuance, pledge and repledge by the Debtor of the securities necessary to carry out the Program, in so far as such approval may be requisite, these proceedings should be dismissed, that the respective properties of the debtors held by the Trustee should be returned to them, and that the Debtor should make all payments and take all steps set forth in the Program and assume all obligations of the Trustee and all prior obligations of the Debtor which have not been disaffirmed by the Trustee.

NOW, THEREFORE, it is

ORDERED:

1. That the Debtor is authorized and directed to file an application with the Interstate Commerce Commission under Section 20 (a) of the Interstate Commerce Act for approval of the extension, renewal, issuance, pledge and repledge by the Debtor of such securities as are necessary to carry out the Program;

2. That the jurisdiction of the Court is retained over these proceedings to enter an appropriate order or orders authorizing and directing the Debtor and other parties to consummate the Program and fixing the date for the filing of petitions for allowances; to dismiss the proceedings and to direct the return to the debtors of their respective prop-

erties held by the Trustee; to determine all allowances of fees and expenses; to direct the Trustee to prepare and file a final report and accounting of his administration of the trust estate; to approve the administration of the trust estate, to pass upon the final report and act of the Trustee and to order his discharge and the discharge of his surety; and to grant such other and further relief to which the Debtor and its subsidiary debtors and the Trustee and other parties hereto may be entitled.

(sgd) GEO. H. MOORE,
District Judge.

Dated May 20, 1947.